

ALERT

USTR Announcement Opens Door to WTO COVID-19 TRIPS Waiver Negotiations

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On May 5, 2021, U.S. Trade Representative (USTR) Katherine Tai signaled a potential new direction in U.S. trade policy, announcing that the United States would support waiving intellectual property (IP) protections for COVID-19 vaccines. In her statement, Ambassador Tai noted:

“This is a global health crisis, and the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures. The Administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports the waiver of those protections for COVID-19 vaccines. We will actively participate in text-based negotiations at the World Trade Organization (WTO) needed to make that happen.”

This statement is noteworthy in several respects. First, it signals that the Biden Administration is focusing on an inclusive and worker-centric trade policy. This is a largely different approach with respect to pharmaceuticals than that adopted by any Administration, Democratic or Republican, in decades.

Second, the World Trade Organization has historically been ineffective in balancing trade and public health concerns. The WTO has often taken the side of pro-business trade over public health (as it has often done with labor, environmental, and human rights issues). The cornerstone of WTO IP law, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, allows for compulsory licensing of patents, but the provision is almost never used. Similarly, the WTO tried during the Doha Round to develop third-country pharmaceutical manufacturing to address public health emergencies (ranging from the AIDS epidemic to malaria drugs), but the

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compromise reached was ineffectual that it has virtually never been used. The United States moved in the other direction, by using free trade agreements (FTA) to create even stronger “TRIPS-plus” patent protections.

As Ambassador Tai acknowledged, the WTO negotiations on any COVID-19 vaccine waiver will be difficult, since any agreement must have the consensus of all WTO members. But in the meantime, USTR’s announcement on its own encourages broader licensing of key patents, which should speed vaccine production and distribution.

This move should not be interpreted as permitting intellectual property theft by China and others; such theft is as widespread in biotech as it is in other key economic sectors. With that in mind, Tai’s announcement is good for public health and for trade as well: If the United States truly wants to remake the WTO, this is a good and critically important place to start.

Wiley’s International Trade Group is closely monitoring these developments and has broad WTO policy experience, including the TRIPS Agreement negotiations and waiver provisions.

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